

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7267 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G K GOSAI

Versus

SECRETARY

Appearance:

MS MEGHA JANI for Petitioner

MR IM PANDYA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. The present petition wherein rule has been issued, making it returnable on 22nd July 1992 by order dated 17th February 1992, has been filed by the petitioner, challenging the order of punishment issued by respondent No.3 against the petitioner by order dated 4th

September 1991, at Annexure 'G'. The punishment imposed against the petitioner by the respondent No.3 is to the effect that the petitioner has been put in a minimum time scale for the period of two years in the scale of Rs.2200 w.e.f. 1st September 1991 to 31st August 1993. It has been specifically mentioned in the said order of punishment that the petitioner is not entitled to increments for the period from 1st November 1991 to 1st November 1992, and therefore, the petitioner is entitled to the regular salary in the scale of Rs.2200 w.e.f. 31st August 1993, and also entitled to release of two increments which have been stopped by way of punishment order.

2. On behalf of the respondents - authority, an affidavit in reply has been filed by one Mr. Y.B.Patel, Under Secretary & Petrochemicals Department, Sachivalaya, Gandhinagar.

3. The petitioner has mainly challenged the impugned order of punishment on the grounds that, before passing the said order of punishment, no regular and detailed departmental inquiry has been conducted by the respondents authority, and therefore, the order of punishment is contrary to the principles of natural justice. The said averments have been made by the petitioner in para 8 of the petition, wherein it has been stated that, in fact, no departmental inquiry was held, no opportunity of being heard was given, and no opportunity to cross examine the witnesses was given, and the rule of inquiry was totally violated, and not followed, and inspite of that, even without considering the explanation to the charge offered by the petitioner, the petitioner was found guilty for his suspected behaviour as a conductor, and therefore, the punishment which has been imposed by the authority, has been challenged by the petitioner in the present petition.

4. The respondents have contended in the affidavit that the Department has only placed the petitioner in the lower scale for a very limited period of two years. This punishment is without any future effect and after two years, the petitioner is to be automatically restored in the original scale at a relevant stage. Therefore, the petitioner will not suffer any permanent financial loss. It is further contended that the petitioner has exceeded his powers and has acted in violation of the rules framed under Rule 45 of the Indian Electricity Rules, 1956 regarding issuing the certificate of competence. The petitioner was not empowered to appoint any person as examiner. In order to derive undue advantage, the

appointment was made by the petitioner. The said appointing is the function of the licensing board, as provided under Rule 3 sub-clause [5] of the Rules & Conditions for issuing the certificate of competence under Rule 45 of the Indian Electricity Rules, 1956. The petitioner has appointed one Mr. Advani as the Examiner without the prior permission of the competent authority. The petitioner was the conductor of the examination, but that does not empower him to appoint the examiner of his choice and by way of making such appointment, the petitioner has violated the rules and candidates appearing for the examination were found committing certain irregularities in the nature of copying and in the process, ultimately, undue advantage went in the hands of the present petitioner. For the said reasons, a chargesheet was issued and a departmental inquiry as per the rules was held and it is proved that the petitioner is involved in the violation of the rules while acting as the conductor of the examination and the petitioner has admitted before the examination sub committee meeting of the licensing board that the petitioner was given reasonable opportunity of being heard and after appreciating the submissions made by the petitioner, the general board was of the opinion that the petitioner is guilty of committing breach of rules of examination. It is further mentioned in the said reply that, after regular departmental inquiry conducted as per the rules and Chief Electrical Inspector now is known as the commissioner of Electricity had appointed Inquiry Officer under Rule 9[2] of the Gujarat Civil Service [D.R.] Rules, 1971 to conduct detailed inquiry against the petitioner and the report dated 16th December 1986 was sent for necessary action to the Deputy Secretary, Mines and Energy Department, Gandhinagar. After observing the principles of natural justice before taking appropriate action against the present petitioner, the Department has taken appropriate action and hence, according to the respondents, there is no merits in the present petition and the same is required to be dismissed. The petitioner has not filed any rejoinder against the said affidavit in reply filed by the respondents.

5. I have heard the learned counsel Ms. Megha Jani for the petitioner and Mr. I.M.Pandya, learned AGP for the respondents authority. The main challenge against the punishment order is that the said order of punishment has been passed without holding departmental inquiry against the petitioner. This fact has been specifically denied by the respondents in the reply and according to the respondents, a detailed and regular inquiry was conducted against the petitioner as per the relevant

rules, and thereafter only, the necessary orders for punishment against the petitioner has been passed by the respondents authority. It is also made clear by the learned AGP Mr. Pandya that, before passing the impugned order of punishment and before holding the departmental inquiry against the petitioner, the petitioner was given a reasonable opportunity before the examination sub committee and the Secretary, Licensing Board of the General Body and thereafter, the chargesheet was served to the petitioner. Against that, the petitioner has submitted the reply, which was taken into account before passing the punishment order under the relevant rules.

6. I have considered the submissions of both the learned counsel for the parties and I have also considered the affidavit in reply submitted by the respondents authority. Looking to the misconduct committed by the petitioner as a conductor in the examination of the Electrical Supervisor, there were some irregularities having been committed by some of the candidates appearing in the examination with the help of the petitioner. The said irregularity in the nature of copying and in the process, ultimately the undue advantage went in the hands of the petitioner, and therefore, considering this aspect, looking to the gravity of the misconduct, the punishment which has been imposed by the respondent against the petitioner, cannot be said to be a harsh or disproportionate punishment to the guilt of the petitioner. In respect of the contention about the fact that no departmental inquiry was held against the petitioner before passing the punishment order, for that there is a specific reply given by the respondents that regular and detailed departmental inquiry was held against the petitioner as per the Gujarat Civil Service [D.R.] Rules, 1971, and therefore, there is no denial of principles of natural justice, and there was no breach of the principles of the natural justice committed by the respondent before passing the punishment order against the petitioner.

7. In view of the aforesaid, considering the above aspects of the matter, in my opinion, the present petition is dismissed. Rule is discharged with no orders as to costs.

OCTOBER 17, 2000 [H.K.RATHOD, J.]

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